

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.5120 of 2010 (O&M)
Date of Decision: 07.07.2015**

Surinder Singh

... Appellant

Versus

Charanjit Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Kumar Bawa, Advocate,
for the appellant.

Mr. Parveen Kataria, Advocate,
for Respondent No-1.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The bone of contention in this appeal is an iron gate fixed at point-X at the entrance of the suit property. The suit was brought by the plaintiff for permanent injunction restraining the defendants from interfering in his possession and to restrain defendants from dismantling or removing the Iron gate fixed at the mouth of the passage in dispute. The plaintiff and defendants are co-sharers/owners of the suit property situated at village Panchhat, Tehsil Phagwara, District Kapurthala, Punjab. The property consists of shops in the front and the appurtenant land which lies behind the shops where the three families reside in their respective quarters. There are three shops constructed in front of the house of the plaintiff. Each of them owned and possessed by him. He is in settled possession of the three shops in joint ownership. The Iron gate is at the farther end of the

three shops from where the defendants commute and are in settled possession of their lots. The access to the parties is from the gate since the shops do not provide exits from their back walls. Even if they did it would not be of much help as it would lead to friction. The plaintiff claim that there was a mutual partition between the co-owners and the portion shown in red colour in the site plan fell to the share of the plaintiff, and the portion shown in blue fell to the share of defendant Charanjit Singh defendant # 1 while the yellow part to Rajinder Singh defendant # 2. The passage shown as ABCD in the site plan was left mutually by the parties for accessing their separate portions. The defendants say that the plaintiff has a right to pass from the gate to access his residence and the passage from the gate is for common use, but he has no exclusive right, title or interest in the gate or in the passage. Plaintiff brought suit alleging threat to his exclusive possession of the gate and the passage to the exclusion of the defendants. The defendants appeared and contested the suit. Issues were framed and parties led their evidence.

The trial court proceeded on the premise that dispute was amongst co-sharers and no injunction can be granted against another co-sharer since each of them is deemed to be in possession of every inch of the joint land. The plaintiff produced no documentary evidence that he exclusively owns the gate and if plaintiff injuncts defendants right to use the passage via the gate they would be deprived of right of egress and ingress to the respective homesteads would be to their mutual inconvenience. The learned Civil Judge (Junior Division), Phagwara did not agree with case set up by the plaintiff and by the judgment and decree dated September 19, 2007

dismissed the suit after appreciating the oral and documentary evidence adduced by the parties on the file.

Aggrieved by the dismissal of the suit, plaintiff Surinder Singh preferred first appeal before the learned District Judge, Kapurthala in 2007. The court of first appeal read the testimonies of PW-1 Amarjit Singh, PW-2 Jasvir Singh, PW-3 Surinder Singh, the witnesses for the plaintiff, and found from the admissions made in the statements that the property in dispute is jointly owned by the parties but a portion of which is in exclusive possession of the plaintiff for the last many years on the basis of an Iqarnama Ex.PW-2/1. There was supporting evidence in the shape of electricity bills and ration cards which indicated exclusive possession of the plaintiff. DW-1 Charanjit Singh himself admitted that plaintiff is in exclusive possession over the shops and his house being in settled possession. Even though a co-sharer plaintiff has a right to retain possession of that portion which has come to him. This was a fair and honest statement made in the stand.

The court of first appeal took due support from the decision of the Supreme Court in **Tanusree Basu & Ors. vs. Ishani Prasad Basu & Ors.**, 2008(3) Civil Court Cases 001 (S.C.) and a decision of this court in **Tara Singh vs. Maghar Singh**, Vol. CXL-(2005-2) page 710 where it has been ruled that a co-owner in exclusive and settled possession of joint property is entitled to injunction from the civil court. In exercise of jurisdiction to issue injunction the court is not limited to the principles of Order 39 Rules 1 & 2 but can invoke section 151 of the CPC as well. Consequently, the court of first appeal reversed the finding of the trial court on issue # 1 and decided

the same in favour of the plaintiff and issued injunction to the extent that defendants are restrained from interfering in the peaceful possession of the plaintiff over house in dispute. This finding is sound in law and correctly reflects the ratio in *Tanusree Basu* case. That is good for the three shops and the house of the plaintiff at the back. But that would not be end of the matter. The question still remains of the iron gate in front of the passage in dispute. On this the court of first appeal took the view based on the evidence on record that since the gate leads to joint property of the plaintiff and the defendants and not exclusively to the house of the plaintiff then plaintiff has no case to assert a personal right over the Iron gate and, therefore, the defendants cannot be permitted to dismantle the gate for common use even though it may be installed by the plaintiff, as all the three parties have a right to access their respective portion in the total property from the disputed passage lying along the wall of the last of the three shops. However, the plaintiff had no demonstrable right to install any gate in front of the passage in dispute to block entry and exit of the co-owners. The passage is to be used in common.

In these circumstances, the learned District Judge, Kapurthala partly decreed the suit for permanent injunction restraining the defendants from dispossessing the plaintiff from his settled possession except in due course of law but the finding of the learned trial court with respect to the prayer for restraining the defendants from dismantling the disputed iron gate has been correctly dismissed by the trial court by appropriately balancing out the interests of both the disputing sides, one against two. If the passage is common then none of the parties has right to put a padlock on the gate to

cause injury and inconvenience to the co-sharers in joint property, till it remains joint and till partition divides the property by decree.

Having heard the learned counsel for the parties I have no reason to differ with the modification of the trial court decree at the judicious hands of the court of first appeal and would dismiss the appeal as no question of law and much less a substantial one arises in the appeal for adjudication in second appeal jurisdiction.

Appeal to stand rejected and remitted to the record room.

(RAJIV NARAIN RAINA)
JUDGE

07.07.2015

manju